

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In Re:

PG&E CORPORATION AND PACIFIC
GAS AND ELECTRIC COMPANY,

Debtors.

) Case No. 19-30088
) Chapter 11
)
) San Francisco, California
) Tuesday, September 14, 2021
) 10:00 AM
)

REORGANIZED DEBTORS'
OBJECTION TO PROOF OF CLAIM
NUMBER 87136, FILED BY SANDRA
PEDROIA FILED BY PG&E
CORPORATION [10903]

REORGANIZED DEBTORS' NINETY-
THIRD OMNIBUS OBJECTION TO
CLAIMS (NO LEGAL LIABILITY
CLAIMS) FILED BY PG&E
CORPORATION [10808] AS TO
CALIFORNIA DEPARTMENT OF
HOUSING AND COMMUNITY
DEVELOPMENT (CLAIM NUMBER
56868)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (All present by video or telephone):

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25 Proceedings recorded by electronic sound recording;
transcript provided by transcription service.

PG&E Corporation and Pacific Gas and Electric Company

1 SAN FRANCISCO, CALIFORNIA, TUESDAY, SEPTEMBER 14, 2021,

2 10:00 AM

3 -00-

4 (Call to order of the Court.)

5 THE CLERK: Court is now in session, the Honorable
6 Dennis Montanelli presiding.

7 Calling the matter of PG&E Corporation.

8 (Pause.)

9 THE COURT: Ms. Parada, can you hear me now? Hello?
10 Ms. Parada, can you hear me?

11 THE CLERK: Yes, Your Honor, I hear you now. I didn't
12 hear anything.

13 THE COURT: Okay. Yeah, I think I was blocked out
14 before. Okay, let me start over again.

15 Good morning, everyone. This is Judge Montali. Is
16 Mr. Taylor on the call for PG&E?

17 MR. TAYLOR: Yes. Good morning, Your Honor.

18 THE COURT: And --

19 MR. TAYLOR: David Taylor from Keller Benvenutti Kim.

20 THE COURT: Good morning.

21 Ms. Pedroia, are you on the call this morning?

22 MR. TAYLOR: Your Honor, if I may. Did you receive
23 the email from Ms. Pedroia earlier this morning? I didn't
24 directly receive it, but I had an email from her forwarded to
25 me in which she said that she would not be able to attend the

PG&E Corporation and Pacific Gas and Electric Company
1 meeting. And it did look like you, but not your clerks, were
2 copied on the email.

3 THE CLERK: Your Honor? Can we -- we don't hear you.

4 Mr. Taylor, can you hear me?

5 MR. TAYLOR: I can.

6 THE CLERK: Okay.

7 MR. TAYLOR: Can you hear me?

8 THE CLERK: I do. I do hear you. Is there anyone
9 else on there?

10 Judge Montali, can you hear us?

11 Mr. Rupp, if you're on the line, can you -- can you
12 hear us?

13 MR. RUPP: Yes, I can hear you.

14 THE CLERK: Okay, thank you. One moment. I'm
15 receiving a message from the judge. It appears he's lost his
16 connection, so he's rejoining. I'll pause the recording. One
17 moment.

18 (Whereupon a recess was taken)

19 THE COURT: I apologize to everyone on the call.

20 Nothing was working correctly, but it appears to be now.

21 Ms. Sandra Pedroia, are you on the call or anyone on
22 your behalf?

23 All right. Mr. Taylor, I was starting to ask you
24 before if you had heard from -- or what your pleasure was. And
25 apparently Mr. Pedroia is not going to participate.

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1 MR. TAYLOR: Yes, Your Honor. And I'm not sure if you
2 heard. I began to say it, but I'll start again. It appears
3 that she sent an email late last night, early this morning, to
4 a number of folks. I think she cc'd you. She cc'd someone at
5 PG&E. It was forwarded to me a short while ago. I'll just --
6 it's very short. I'll just read it to you, if that's okay.

7 THE COURT: Yeah. Just before you do that, Ms.
8 Pedroia has been warned many times not to communicate with the
9 Court. So you can repeat it. But I'm -- if she's hearing me
10 or --

11 MR. TAYLOR: Understood.

12 THE COURT: -- and listening, that's not going to do
13 her any good. All right. Go ahead.

14 MR. TAYLOR: Just for the record.

15 "I appreciate your email." This is in response to
16 Prime Clerk's notice of the hearing. "I appreciate your email,
17 but I've repeatedly told Steven Schirle, litigation lawyer at
18 PG&E, and Bankruptcy Judge Dennis Montali that I'm bedridden
19 and very sick with symptoms of COVID. My daughter is taking
20 care of me. I can barely talk. Is it possible that this court
21 hearing be rescheduled? I tried my best to see if I could do
22 this today, but I'm just too weak. Please see if this can be
23 rescheduled."

24 THE COURT: All right. And what is your request then?

25 MR. TAYLOR: It's --

PG&E Corporation and Pacific Gas and Electric Company

1 THE COURT: Do you want to request a continuance or
2 not?

3 MR. TAYLOR: I would simply say that Your Honor
4 implied in your August 10th order on this matter that it may be
5 possible to decide PG&E's objection on the papers. And PG&E
6 would certainly be fine submitting the objection without
7 argument if the Court were inclined to go that route.

8 THE COURT: All right. Again, we have a number of
9 unidentified callers. Is there anyone, either Ms. Pedroia
10 herself or someone representing her or in her family, her
11 daughter or friend or anyone else on the call that wishes to be
12 heard?

13 Mr. Taylor, I'm inclined to take this on the papers.
14 I want to clarify a couple of matters with you. First of all,
15 Ms. Pedroia, I'm sorry if she's unwell. She's been able to
16 communicate extensively. And if she can't talk on the phone,
17 that's one thing. But she -- her daughter has communicated
18 with the Court in the past. And someone is able at least to
19 communicate something.

20 For you I have a question. I just want you to remind
21 me. I recall that Ms. Pedroia filed a claim in the amount of
22 250,000 and then later on was amended up to a million dollars.
23 But would you refresh my memory, please? Earlier in the case,
24 in the last several months, she was invited to and was
25 scheduled to participate in a mediation; is that correct?

PG&E Corporation and Pacific Gas and Electric Company

1 MR. TAYLOR: Yes, Your Honor. We use the Court's ADR
2 procedures. We noticed an abbreviated mediation. It was set
3 for a date. She requested that that date be moved back by a
4 few weeks. We accommodated that, reset it, and then
5 appeared -- PG&E appeared at the Zoom mediation on the
6 rescheduled date. And Ms. Pedroia did not appear.

7 THE COURT: Okay. That's what that's what I recall.
8 So, yes, it is true that I issued an order on August 10th and
9 indicated that I would give Ms. Pedroia an opportunity to
10 respond by the 7th of September to explain why the debtors'
11 argument about the statute of limitations should not be -- is
12 not well taken and indicating to her that if she doesn't do
13 that, perhaps I'd be inclined to sustain the objection.

14 I'm not aware -- and again, asking Mr. Taylor. Have
15 you received any communication, even informal communication,
16 that deals with anything in the nature of the statute of
17 limitations defense that you've set forth?

18 MR. TAYLOR: Your Honor, she -- Ms. Pedroia, through
19 her daughter, submitted an email, I guess, letter that, in my
20 view, did not address the statute of limitations issue. But I
21 want to make clear that there was a submission on the 7th.

22 THE COURT: Yes, I understand that. Okay. All right.
23 One more time, anyone on the call who hasn't been identified
24 and is simply on the docket as a guest wish to be heard who
25 speaks -- either is Ms. Pedroia herself or speaking on her

PG&E Corporation and Pacific Gas and Electric Company

1 behalf? All right. There's no one appearing. I will consider
2 this matter submitted, and we'll issue an appropriate order.

3 Thank you, everyone, for your time. And unless anyone
4 wishes to be heard, I'm going to conclude this hearing.

5 MR. TAYLOR: Thank you, Your Honor.

6 THE COURT: All right. Thank you. That concludes the
7 hearing.

8 (Whereupon a recess was taken)

9 THE CLERK: Court is now in session, the Honorable
10 Dennis Montali presiding. Calling the matter of PG&E
11 Corporation.

12 THE COURT: All right, good morning. May I have --
13 who do you have, Mr. Hancock and Ms. Lee? Are they coming in
14 today?

15 THE CLERK: Yes. I'm bringing them in now, Your
16 Honor.

17 MR. HANCOCK: Good morning. This is Mark Hancock for
18 PG&E.

19 THE COURT: Good morning, Mr. Hancock. Hold on one
20 second. We've got to get your -- Ms. Lee in here.

21 Ms. Lee, can you turn on your camera and your mic?

22 MS. LEE: I'm so sorry, Your Honor. I'm used to not
23 being able to do that myself. This is Erica Lee for the
24 California Department of Housing and Community Development.

25 THE COURT: Okay. Good morning to both of you. Thank

PG&E Corporation and Pacific Gas and Electric Company
1 you for participating.

2 I presume you got my order and you know my suggestion
3 about schedule and timing.

4 MS. LEE: Yes, Your Honor.

5 THE COURT: Okay. Ms. Lee, I guess you're up to bat
6 then. How much time do you want to reserve?

7 MS. LEE: I would like to reserve five minutes,
8 please.

9 THE COURT: Okay, let's go. I've read everything, so
10 you don't have to go back and reinvent the wheel. I want you
11 to tell me how I can get out of any parking tickets while we're
12 done here so I don't have any parking violations on my car.

13 MS. LEE: Thank you, Your Honor.

14 I wanted to speak first about Your Honor's first point
15 in the order regarding the definition of commercial modular.
16 And that's in the definition section of the Manufactured
17 Housing Act, specifically Section 18001.8 where commercial
18 coach has the same meaning as commercial modular as that term
19 is defined in this section.

20 THE COURT: Well, I -- it was the word "coach" that
21 threw me off because -- so you're saying essentially coach
22 means modular?

23 MS. LEE: Yes, Your Honor. They're the same thing.

24 THE COURT: Does the word "modular" appear in 18001.8?

25 MS. LEE: Yes, it's -- the definition specifically

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1 states commercial coach has the same meaning as commercial
2 modular.

3 THE COURT: Okay. Okay. Well, I sort of assumed that
4 was the right result, but I just didn't spend too much time
5 going through all those sections.

6 MS. LEE: Of course, Your Honor. Thank you.

7 And I will start by speaking to Your Honor's first
8 hypothetical regarding the single lien with 261 dollars as of
9 2018. And the Court is correct that under the debtors' theory,
10 the Department would indeed have to file a lawsuit for a few
11 hundred dollars within four years. This would be impractical
12 and probably never occur.

13 The Court may want to consider -- and if I may, I'd
14 like to provide a little bit more context for -- regarding the
15 MHA in regards to this hypothetical. The Court may want to
16 consider that because this section of the Manufactured Housing
17 Act, 18116.1, and the Manufactured Housing Act in general
18 applies equally to mobile homes as well as other types of
19 mobile housing, like manufactured housing and boathouses, that
20 under the debtors' theory, the Department would have to file
21 suit and potentially evict people from their homes for what is
22 a matter of a few hundred dollars.

23 It would therefore make much more sense to adopt the
24 legislature's -- adopt the Department's interpretation of the
25 statute, which is the legislature did not intend for a statute

PG&E Corporation and Pacific Gas and Electric Company
1 of limitations to exist on these liens. And it's because not
2 only would the Department not bring a civil action, it
3 shouldn't bring a civil action because the State shouldn't be
4 evicting people when they owe 261 dollars out of their houses.

5 So it makes much more sense that the legislature, in
6 drafting section 18116.1, intended for the liens to be paid off
7 when the property changed hands. And presumably the homeowner
8 or even the buyer had some cash that he or she could use to pay
9 off the liens and at that point acquire proper record title
10 documents. And --

11 THE COURT: An owner who was in financial difficulty
12 would, in effect, simply not be threatened with eviction but
13 would have to pay the bill at some point when the owner sells
14 to the purchaser. But the purchaser can bear that cost; isn't
15 that the point?

16 MS. LEE: Yes. The owner or presumably the buyer as
17 well could also --

18 THE COURT: Well, that's what I meant. Yeah.

19 MS. LEE: Yes, yes, Your Honor. Thank you.

20 And actually, to Your Honor's point, this came up a
21 few years ago. In 2016, the legislature passed 8587, which was
22 enacted as Section 11861.(d)(1)(D) (sic). And this is the
23 five-year --

24 THE COURT: Wait, slow down. 11861-point --

25 MS. LEE: Let me make sure I'm getting it right.

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1 18116.1(d)(1)(D).

2 THE COURT: Okay.

3 MS. LEE: And this is the five-year program. This
4 is -- it's titled Register Your Mobile Home. And what was
5 happening is purchasers were unknowingly buying mobile homes
6 that had years of unpaid registration fees on them, and the
7 owner would disappear. And then the buyer could not get clear
8 title to their mobile home because HCD could not amend the
9 title without the liens being paid off.

10 So in response, the legislature enacted this new
11 statute, which allows the purchaser to pay for a max of five
12 years of the registration fees on the mobile homes. And the
13 legislature would not have done this if the liens simply
14 expired in three years.

15 THE COURT: Well, does this -- this takes me back to
16 the opening question. Does that amendment for mobile homes
17 cover modules?

18 MS. LEE: Does the amendment cover modules?

19 THE COURT: Well, I mean --

20 MS. LEE: Yes, Your Honor. Yes.

21 THE COURT: Let me try it a different way. If I
22 bought a model from PG&E with a 261-dollar lien on it, I
23 could -- could I take advantage of this AB 587 that you
24 described and pay off that 261 dollars over five years?

25 MS. LEE: Yes. This Section 18116.1 covers all of

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1 the -- all of the mobile homes as well as commercial coaches,
2 floating homes, manufactured homes.

3 THE COURT: Okay.

4 MS. LEE: So yes, Your Honor, it would.

5 THE COURT: The point is we're not dealing with
6 evicting people from their homes. We're evicting, or not, a
7 public utility from its module. And we're not evicting it. It
8 can do nothing but pay the accrued charges, either whenever it
9 wants or when I or somebody else buys it, then it -- then the
10 buyer pays it. One way or the other the State gets paid,
11 right?

12 MS. LEE: If the line is used defensively, yes, Your
13 Honor.

14 THE COURT: Yeah.

15 MS. LEE: I'm merely trying to make the point that the
16 intention behind the law was for there to be no statute of
17 limitations because the Manufactured Housing Act applies
18 equally to commercial modulars, as it does mobile homes.

19 THE COURT: Got it.

20 MS. LEE: Thank you, Your Honor.

21 And I would like to move on to Your Honor's second
22 hypothetical.

23 THE COURT: Perfect. Whenever you want.

24 MS. LEE: Okay. So the Department can, Your Honor,
25 and was intended to be able to use its liens defensively

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1 whenever a party requested clear title or an amendment to
2 record -- to record title. Section 338 provides that civil
3 actions upon a liability created by statute must be brought
4 within three years but does not forbid the Department from
5 refusing to amend title within three years. And as the order
6 points out, Section 2911 does not support the argument that the
7 liens would be extinguished in this matter because that section
8 only applies to a situation where a statute of limitations
9 exists.

10 So in this case, Your Honor, just to provide a little
11 bit more context, the -- because commercial modulars and mobile
12 homes and other types of mobile housing -- because they move
13 around, they're not in a specific place. And because the
14 Department is tasked with regulating them, there are costs that
15 go into the Department's regulations. The Department has to
16 know the location of these commercial modulars or mobile
17 housing, has to oftentimes know their condition. And this
18 costs money.

19 So when an owner of the property doesn't pay though
20 all the fees, registration fees and other types of fees under
21 the Manufactured Housing Act, they become liens. If those
22 liens just expire in three years, then the Department won't be
23 funded enough to actually do its job, which it is tasked with
24 under the Manufactured Housing Act.

25 THE COURT: But it has the right to do it. So it

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1 could do it, right?

2 MS. LEE: Legally it must do it.

3 THE COURT: I mean, there's enough money -- maybe
4 there's not enough money yet. But if -- we're not talking
5 about a 200-dollar charge. We're talking about PG&E has a
6 liability which I guess they don't contest but for statute of
7 limitations of in excess of 300,000 dollars. So if the
8 Department chose to, they could commence a suit in the Superior
9 Court to recover that money, right?

10 MS. LEE: Yes, it could.

11 THE COURT: Right, okay.

12 MS. LEE: But it most likely wouldn't for lack of
13 resources. But it has the legal right to, yes.

14 THE COURT: Does it, in fact, in practice ever
15 commence?

16 MS. LEE: It has never once commenced a civil action.
17 It has instead always used the lien defensively.

18 THE COURT: Okay. Well, but the lien -- in practical
19 terms then, it's sort of a nonrecourse obligation. Are you
20 familiar with that term in the commercial setting, nonrecourse?

21 MS. LEE: I think that means when there's -- very
22 elementary element, I understand.

23 THE COURT: Well, okay. I'll give you -- I'll respond
24 it. If I made you a loan to buy your house and I'm the lender
25 on your house under the applicable law, chances are I would be

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1 limited to in my claim against the house, not against you
2 personally. So it would call a nonrecourse for reasons that I
3 won't bore you with.

4 But if I have the right to -- you have the right to
5 walk away from your house without personal liability. Contrast
6 that, the Department, if it wishes to, or if PG&E took all
7 these modulars and moved them to another -- out of state,
8 PG&E -- I mean, the Department could sue for money judgment, in
9 effect not pursue its lane, but just sue a money judgment
10 against a solvent defendant, that might not be a bad idea.
11 Against the individual mobile home unit for a few hundred
12 dollars, it would probably be a stupid idea.

13 MS. LEE: Yes, Your Honor.

14 THE COURT: Okay, go ahead, whatever time you want.
15 And by the way, Ms. Lee, you don't have to use up your time.
16 You can reserve more, or you can say whatever you want. I
17 mean, this is a pretty narrow issue.

18 MS. LEE: I don't want to rehash what I drafted in my
19 pleadings, Your Honor, as you requested. So I will reserve the
20 rest of my time.

21 THE COURT: Okay. Then you've got about -- we'll call
22 it at least eight minutes.

23 Okay. Mr. Hancock?

24 MR. HANCOCK: Sure. Thanks, Your Honor. Good
25 morning.

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1 THE COURT: How are you going to get out of this one?

2 MR. HANCOCK: I've got lots of --

3 THE COURT: This doesn't seem to be the most
4 challenging thing from my point of view. But you have a chance
5 to convince, but I might --

6 THE COURT: All right. Well, good.

7 So first, I would say that Ms. Lee hasn't addressed
8 what is what is the ultimate standard here, that we need a
9 legislative intent expressed in clear and unmistakable language
10 that there is no statute of limitations, that -- she didn't
11 address it. It's not in the statute. And -- but I'll go on,
12 and I'd like to address the points that she raised in
13 discussing your hypotheticals.

14 So with respect to the first one and the reference to
15 the 3- or 400-dollar lien, the argument Ms. Lee seemed to be
16 making and the discussion was -- seemed to center on the
17 potential disposition of people of their homes and could that
18 be too harsh of a result. The reality is, is that under the
19 statute, there is, in effect, something of a graduated response
20 that the State can take.

21 First of all, the statute of limitations is relatively
22 a long one with the one-year accrual period and then three
23 years after that. That gives you four years. And then at that
24 point, the State can enter into a five-year long-term payment
25 program, which takes you out to nine years. And if at that

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1 point you have somebody who is not -- still not paying after
2 nine years, then the State doesn't necessarily need to seize
3 and sell, although at that point it may be fully justified when
4 there's been that much time passing and still no payment. They
5 could bring for a small amount like this -- I guess it would be
6 a -- what, a limited jurisdiction case in Superior Court or
7 potentially, what, a small claims action. I have little --

8 THE COURT: I guess so. I don't know.

9 MR. HANCOCK: To see what --

10 THE COURT: You can't -- when I was in practice, you
11 couldn't be a lawyer. A lawyer couldn't go into small claims.

12 But listen, if you're in this five-year program, does
13 the statute -- the provision of the five-year program include
14 an extension of the statute? I mean --

15 MR. HANCOCK: Well, that's --

16 THE COURT: -- is the statute tolled during the
17 five-year program?

18 MR. HANCOCK: Sure. That's what I put in my brief. I
19 would expect that as a condition to giving them five years,
20 that they would include an extension of the statute. I can't
21 imagine that the State, being as sophisticated as it is, would
22 give the person or the company owing money five years
23 additional period to pay without preserving their right to
24 enforce their remedies under the statute, which is --

25 THE COURT: Well, but I --

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1 MR. HANCOCK: -- (indiscernible).

2 THE COURT: I did read your brief. But my question is
3 not would a good lawyer for the state put in a tolling. Does
4 the statute itself extend -- does the statute that implements
5 this five-year payout implement an extension of any applicable
6 statute of limitations?

7 MR. HANCOCK: The statute -- well, first of all --

8 THE COURT: Because it may be they didn't extend it
9 because it didn't apply that there wasn't one.

10 MR. HANCOCK: So the provision providing for the
11 five-year long-term repayment program does not itself reference
12 an extension of the statute of limitations. It just doesn't
13 address it, which would leave it open to the State to allow for
14 whatever agreement it wanted to reach or could reach with the
15 party indebted to it. Again, I can't imagine that they would
16 grant an additional five years without obtaining such an
17 agreement. Why would they ever waive their rights to enforce
18 the action when giving them additional five years?

19 THE COURT: The five-year -- the five-year program
20 that both you and Ms. Lee referred to sounds remarkably similar
21 to the provisions for California real property to redeem your
22 property from a tax lien default. Are you familiar with that
23 provision?

24 MR. HANCOCK: I'm not.

25 THE COURT: Well, I presume you pay your mortgage on

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1 your house. But if you fall in default on your taxes to the
2 county where your home is, you can go in -- you can enter into
3 a five-year redemption period. And don't -- you don't run the
4 risk of loss of your property. And again, it seems parallel.
5 I don't want to get bogged down on it, but it's remarkably
6 similar to the concept. But the difference clearly on that is
7 there's no recourse on the real property, Your real property
8 taxes is not personal liability for you as a homeowner. Okay,
9 go ahead.

10 MR. HANCOCK: Sure. So that's my point there. Again,
11 there is effectively a graduated response which could take you
12 out to nine years of time before they would need to consider
13 whether they actually want to file a lawsuit, if that's
14 something that they're averse to doing, or seizure and sale,
15 particularly if they were to, like I said, get an extension or
16 an agreed-upon extension of the statute of limitations which
17 would seem like a reasonable thing to do.

18 THE COURT: Mr. Hancock, you may not know the answer
19 to this question because I don't think I've seen you in the in
20 the PG&E bankruptcy before. But what was the practice for PG&E
21 and the Department before the bankruptcy? Did it routinely pay
22 this kind of liability, or did it just let it ride until
23 somebody bugs them? Do you know historically what has been the
24 practice?

25 MR. HANCOCK: I wish I could answer your question.

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1 The first time I encountered this was during the bankruptcy.

2 And I don't know what the history was.

3 THE COURT: It seems like -- what struck me as strange
4 is that PG&E even -- I mean, I'm not making light of your
5 argument. Your argument is not frivolous by any means, and nor
6 have I made up my mind. But I'm sort of having a difficult
7 time thinking this would be right. But it just seemed like, as
8 a practical matter, why wouldn't PG&E just be paying these in
9 the normal course? Again, (indiscernible) answer that.

10 And it shouldn't be a bankruptcy issue. This seems
11 more like the kind of liability that PG&E deals with every
12 single day, forest fire season or not, bankruptcy or not.

13 Anyway, go ahead with your arguments.

14 MR. HANCOCK: Sure, thanks.

15 Onto the second hypothetical which raises the
16 question, as I understand it, of whether an extinguished lien
17 and whatever that means under Section 2911 could be raised
18 potentially defensively by the State.

19 THE COURT: Well, you're reframing the question. The
20 clue I gave you was maybe 2911 isn't the answer. If 2911 is
21 the answer, we're done, you win. But if 2911 isn't the answer,
22 why isn't that a practical thing what would happen?

23 MR. HANCOCK: Sure. So what I was -- what I was
24 doing --

25 THE COURT: I mean, the Department would say, look,

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1 you haven't paid the bill in twenty years, we're not going to
2 give you a clear title until you pay your twenty years of
3 accrual.

4 MR. HANCOCK: I understand. What I was going to say
5 was that I don't have the same reading of Section 2911 as your
6 hypothetical suggests. And if you'll indulge me --

7 THE COURT: Okay.

8 MR. HANCOCK: If you'll indulge me and let me
9 explain --

10 THE COURT: Sure, sure, of course.

11 MR. HANCOCK: -- I'll say why.

12 So I'm not sure if you have 2911 in front of your --
13 have it accessible. It begins by saying a lien is
14 extinguished. And then it goes on to say by lapse of time in
15 either of a couple of circumstances.

16 THE COURT: Yes.

17 MR. HANCOCK: Okay.

18 THE COURT: I have -- I had it in front of me when I
19 wrote the --

20 MR. HANCOCK: I'm certain that you did. I just didn't
21 know how much --

22 THE COURT: But it's a CCP lien, not a lien under some
23 other statute, correct?

24 MR. HANCOCK: Yeah. So it's -- yeah. Well, it's --
25 here's what I want to explain in terms of my understanding of

PG&E Corporation and Pacific Gas and Electric Company

1 how it reads. A lien is extinguished. It doesn't say a lien
2 is extinguished with respect to the affirmative pursuit of
3 collection. It says a lien is extinguished by the lapse of
4 time within which under the provisions of the CCP an action can
5 be brought upon the principal obligation.

6 My distinction, from what I understand the
7 hypothetical to be saying, is that I understand the
8 hypothetical to imply that a lien is extinguished as to
9 affirmative actions with respect to the running of the statue
10 by which an affirmative action may be brought. I'm doing my
11 best to explain it. I hope I'm doing all right.

12 My point is that the of the lien is extinguished,
13 period, for offensive purposes or defensive purposes by either
14 of the two time periods that follow. One is the time to bring
15 in an affirmative action, or two, a circumstance that doesn't
16 apply with respect to the -- with respect to bond assessments
17 and so forth. And so I think that --

18 THE COURT: Yeah, but that -- but I understand. But
19 hold on. I have -- I printed out that that section of 2911,
20 but I don't -- I set it aside. I thought it made reference
21 specifically to 22 of the CCP and not to something else. So
22 the --

23 MR. HANCOCK: It does in terms of the time marker by
24 which a lien is extinguished. So it says a lien is
25 extinguished by the (indiscernible) within which, under the

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1 provisions of the CCP, either an action can be brought upon the
2 principal obligation or the second one which doesn't apply.

3 My point is that a lien is extinguished for all
4 purposes. It doesn't say --

5 THE COURT: For all purposes.

6 MR. HANCOCK: It doesn't say -- it doesn't say, as I
7 think the wording of a hypothetical suggested, it's only
8 extinguished for purposes of bringing an affirmative action.
9 It says a lien is extinguished. And my point is, you know,
10 period, offensively and defensively when either of these time
11 periods run.

12 And so I think the answer is, yes, if that lien is
13 extinguished for all purposes, which I believe is the correct
14 interpretation of the statute, then it's either for offensive
15 purposes or defensive purposes.

16 THE COURT: Well, but would you agree that -- I mean,
17 again, this is where it's circular, I think. And I don't mean
18 to create a hypothetical-hypothetical. And then -- but if 2911
19 doesn't apply, then the lien didn't get extinguished by 2911.
20 So it would seem to me that if Ms. Lee and the Department's
21 argument is correct, you never get to 2911. And the lien that
22 exists under that the Health and Safety Code exist in
23 perpetuity.

24 MR. HANCOCK: So let's go ahead and assume that the
25 2911 doesn't apply in this circumstance.

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1 THE COURT: Right.

2 MR. HANCOCK: Then I think we're looking at case law
3 which talks about -- and that's decisions we -- I cited in my
4 brief. I'm trying to find it.

5 THE COURT: Yeah. You cited several of them.

6 MR. HANCOCK: Yeah.

7 THE COURT: And I did read them.

8 MR. HANCOCK: For the Griffiths (ph.) decision, for
9 example, it refers to when the lien exists without any
10 provision for its enforcement, it's simply a right without a
11 remedy, meaning it's a neutered or unenforceable lien. It
12 exists, but it has no mechanism for enforcement. I would say
13 either that's offensively and defensively. So whether you're
14 relying on 2911, you still have case law that would cover the
15 other interpretation if it's not entirely --

16 THE COURT: But the case law -- but the case law that
17 depends upon no enforcement isn't -- there's no case that says
18 that the Department has to release the lien after the four
19 years either.

20 MR. HANCOCK: Well --

21 THE COURT: The enforcement is that they don't release
22 the lien, right?

23 MR. HANCOCK: Well, correct. We don't have case law
24 specifically dealing with this circumstance. So I'm referring
25 to these general principles of what happens to liens when their

PG&E Corporation and Pacific Gas and Electric Company
1 mechanisms for enforcement expires.

2 But again, the notion -- there seems to be at least
3 expressed by Ms. Lee some expectation that the Government
4 should not be required to enforce this lien at any time because
5 that would be something of a hardship or it's not their
6 practice and so forth. But again, you've got these graduated
7 responses. And whether they're large or small, statute of
8 limitations bar small and large claims every day across a whole
9 bunch of disciplines, of course. And they can always provide
10 additional time, their five-year agreement. They can file a
11 limited action to recover this, or they can choose if it's
12 small enough to let it lapse and not enforce it.

13 But I would say, because I don't want to repeat at
14 this point what I put in my briefs -- I would say at this point
15 the principal problem that they have not overcome is that we
16 have clear California Supreme Court case law that says you need
17 a clear and unmistakable language if there is no statute of
18 limitations. That's the governing principle for this motion.
19 And this is where the State has not given you the answer to
20 that question, which would probably be at the beginning of your
21 order as to how there is a clear and unmistakable language.

22 THE COURT: Okay, got you. All right. You want
23 anything more, Mr. Hancock? I'm not a rigid time enforcer, but
24 if you have --

25 MR. HANCOCK: No.

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1 THE COURT: Okay.

2 MR. HANCOCK: No, thank you, Your Honor.

3 THE COURT: Ms. Lee, do I have clear and unmistakable
4 language in 18116.1?

5 MS. LEE: Yes, you do, Your Honor. And it's -- with
6 this, basically we have fleshed this out in our briefing. But
7 the phrase notwithstanding, any other provision of law is clear
8 and unmistakable. And the California Supreme Court -- this is
9 in the Cutler case that we cite to, has -- recalls this phrase,
10 states that it signaled a broad application overriding all
11 other code sections. That would include sections 338 and 340.

12 The legislature could have drafted this health and
13 safety code section without the provision notwithstanding any
14 other provision of law, but it chose to include that phrase.
15 And PG&E's interpretation of this section would make this
16 phrase superfluous.

17 The section goes on to describe how the liens shall
18 include the registration fees of the very beginning. And
19 presumably the registration fees could be older than three
20 years, could be much older, as they are in this case, and how
21 the liens shall continue to accrue from the very original --
22 the original registration fee. This statute does have clear
23 and unmistakable language.

24 And, Your Honor, as to the interpretation of 2911, the
25 Department, of course, disagrees with PG&E's interpretation.

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1 Instead, 2911 actually only refers to civil actions. And I do
2 have a case to that effect. That is the Montgomery Ward v.
3 County of Santa Clara. And the citation, 47 Cal. App. 4th
4 1122. And the pincite is 1138.

5 THE COURT: So you're saying that the Montgomery Ward
6 case says it doesn't -- it applies only to civil actions?

7 MS. LEE: Yes, Your Honor. In that case, the -- it
8 was -- the government entity was the county. The county had
9 not brought a civil action. The plaintiff tried to say that
10 the county was trying to enforce a tax. Because the county had
11 not brought a civil action, 338 -- the court stated that 338
12 did not apply.

13 THE COURT: Well, but doesn't that mean that, in our
14 hypothetical, the Department wouldn't be able to bring an
15 action, but it could still enforce its lien?

16 MS. LEE: I don't actually fully know what the
17 county's legal rights were there, Your Honor. HCD does have
18 the legal rights to sue. And the Manufactured Housing Act says
19 that HCD may bring a civil action, uses the word "may," doesn't
20 say it shall or has to. So --

21 THE COURT: Yeah. But isn't the point -- I'm not
22 familiar with this Montgomery Ward case. But if the Montgomery
23 Ward case says it doesn't apply, it only applies to civil
24 actions, it would suggest the Department can't bring a civil
25 action but can enforce its lien defensively.

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1 MS. LEE: Here the -- but here, Your Honor, the
2 Department can bring a civil action. It just chooses not to
3 because it has -- its practices to enforce its liens
4 defensively.

5 THE COURT: A lot of people who choose not to end up
6 losing because the statute limitations run against -- Ms. Lee,
7 let me take a timeout for a minute. I --

8 MS. LEE: Yes.

9 THE COURT: My clerk has advised me that someone named
10 Lisa Campbell wishes to raise their hand.

11 Ms. Campbell, unless you are a lawyer for the
12 Department or PG&E, I'm not sure I'm prepared to have you --

13 MS. LEE: She is, Your Honor. She is --

14 THE COURT: Do you know Ms. --

15 MS. LEE: -- senior staff counsel at the Department.

16 THE COURT: Okay. I'll let Mr. Campbell in then.

17 You can bring her in, Ms. Parada.

18 MS. CAMPBELL: Good afternoon, Your Honor. Thank you
19 very much. Just briefly.

20 You had asked a specific factual question as to the
21 Department's --

22 THE COURT: Ms. Campbell, I need you -- I just need
23 you to state your name --

24 MS. CAMPBELL: Oh.

25 THE COURT: -- and appearance. And I hope you're not

PG&E Corporation and Pacific Gas and Electric Company
1 driving.

2 MS. CAMPBELL: No, I'm not driving, sir. My
3 apologies. I'm Lisa Campbell. I'm a senior staff counsel with
4 the Department of Housing and Community Development.

5 THE COURT: All right. And what did you want to add?

6 MS. CAMPBELL: You had asked a factual question of
7 counsel related to the practices of PG&E receiving notices
8 annually, whether they are notified of the annual registration
9 and titling fees due. And PG&E has over hundreds and hundreds
10 of commercial modulars registered with the Department, is very
11 well aware of the practices.

12 The ninety-two specific commercial modulars, some of
13 them were noticed annually; some of them were not. PG&E
14 notified HCB, our Department, of -- that we are -- they
15 notified us that they were aware that they needed to pay them,
16 but they were trying to transfer or sell them but they weren't
17 successful. And so they never completed the process.

18 So PG&E is and was very well aware of their
19 responsibility as a commercial modular owner of their -- the
20 fees that are due annually. It was not a surprise. So I just
21 wanted to point out there is a process in place that -- it's
22 similar to the DMV with cars. They're annually noticed. And
23 they're required to pay those fees.

24 THE COURT: Well, but PG&E may have chosen not to do
25 anything because Mr. Hancock convinced them that he can win the

PG&E Corporation and Pacific Gas and Electric Company
1 statute of limitations argument. And if he's right, then
2 you're out of luck. You lose several (audio interference)
3 fees, right?

4 MS. CAMPBELL: That's correct.

5 THE COURT: Yeah, okay.

6 MS. CAMPBELL: Thank you.

7 THE COURT: Okay. Thank you, Ms. Campbell.

8 Mr. Hancock, that was an unexpected addition. If
9 you -- do want to add anything?

10 Ms. Campbell, you should mute your microphone while
11 you're on the call.

12 MR. HANCOCK: Yeah. Your Honor, I --

13 THE COURT: Hold on. Ms. Campbell, you need to mute
14 your microphone.

15 MS. CAMPBELL: Sir, I have. I did.

16 THE COURT: Oh, okay. Someone was talking. Okay.
17 Thank you. All right.

18 Mr. Hancock, I'm sorry. Did you want to add anything
19 further?

20 MR. HANCOCK: Sure. Just that that was an unexpected
21 insertion on facts. I'm unable to respond to that. I don't
22 know whether it's accurate or not. And so I'm at a
23 disadvantage. And if the Court plans to rely on that, I
24 haven't had a means to consider it or respond to --

25 THE COURT: I don't think it's terribly relevant to

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1 the to the legal issue. It's more -- perhaps more practical.
2 But you haven't argue there was some surprise. I mean, your
3 argument is a very straightforward one. We don't have to pay
4 because of the statute of limitations, period. Right? And so
5 you win or lose on that argument, don't you?

6 MR. HANCOCK: This is a statute of limitations
7 argument. You're correct, Your Honor.

8 THE COURT: Yeah.

9 MR. HANCOCK: Your Honor, if I could address the point
10 that Ms. Lee brought up in in her response there.

11 So as to her argument that 18116.1(b), the
12 notwithstanding any other provision of law language is clear
13 and unmistakable, what I want to emphasize is that it is not
14 clear and unmistakable for the reason that it references no
15 temporal element. In the cases, for example, that that we
16 cited that refer to examples of the clear and unmistakable
17 language, there's always a temporal element. For example, one
18 of the cases said there is no limitation as to when you can
19 bring an action. The other one said an action can be brought,
20 quote, at any time. Those are the examples of the clear and
21 unmistakable language, even if they don't actually say there is
22 no statute of limitations.

23 And what we have that --- what we have from that,
24 notwithstanding any other provision of law, apart from the fact
25 that it doesn't refer to any temporal element as to when an

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1 action accrues, it just indicates that fees and penalties
2 continue to accrue under the statute when there are
3 delinquencies.

4 And it references, I believe, the various penalties
5 and so forth under 18116.2, I believe it is, which would be
6 circumstance where somebody perhaps pays off than they're
7 delinquent again. But that's going to be capped by a statute
8 of limitations or an agreed-upon statute extension under a
9 five-year agreement.

10 So my final point is, is that we still don't have that
11 clear and unmistakable language. We have what is unclear and
12 ambiguous with respect to the meaning of that, notwithstanding
13 any other provision of law, which does not address anything
14 having to do with when an action can be brought. It's being
15 stretched to an application that the statute just does not
16 contemplate.

17 The last thing I would say -- the second-to-last thing
18 I would say is just that I haven't had a chance to review the
19 Montgomery Ward case which was not in the briefs. And if the
20 Court intends to rely on that, I would appreciate an
21 opportunity to review it and address that. With that, I'll
22 submit.

23 THE COURT: Ms. Lee, anything further?

24 MS. LEE: Your Honor, only to state that in reading
25 Section 18116.1, the Court will interpret subsection (b) in

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1 conjunction with all the other subsections, which, as I
2 previously described in the Register Your Mobile Home Program,
3 shows that the legislature did not think the liens expired
4 because, under that program, when buyers who were defrauded
5 owed years and years of liens, the legislature -- this is in
6 Section (d) (1) (D) -- the applicant pays any charges assessed by
7 the Department during the period between the time the applicant
8 took ownership or December 31st, 2015, so either whenever the
9 purchaser purchased the property or December 2015. And the
10 purchaser could have purchased the property years before 2015.

11 So in this program, the Register Your Mobile Home
12 Program where the legislature stepped in to prevent buyers who
13 were defrauded from having to pay potentially decades' worth of
14 registration fees, the buyers had to pay a max of five years.
15 And that's because they had to apply for this program by 2020.

16 So the earliest fee could have been 2015. If you
17 applied -- if you applied by 2020, the max you would have had
18 to pay was five years. And it just shows that the legislature
19 never intended for these liens to expire in three or otherwise
20 they wouldn't have stepped in to waive these fees and help
21 these defrauded buyers. And they wouldn't have made the
22 longest amount buildings would have to be paid as five years.

23 THE COURT: Okay. So, Mr. Handcock, here's a
24 question. This comes up in a context of an agreed briefing
25 that you and the other side came up with. And it's

PG&E Corporation and Pacific Gas and Electric Company
1 essentially -- it arises with the proof of claim. And so the
2 Department files a claim for 300 and some odd thousand dollars.
3 And you briefed it and -- thoroughly and argued it well.

4 My question is, though, what happens if I rule? In
5 other words, if I rule in favor of the Department, that means
6 the claim stands. And presumably PG&E will pay it. If I -- or
7 does it -- or is that what it means? In other words, if I say
8 your statute of limitations argument and I reject it, they
9 didn't have to bring a suit, the equivalent of bringing a suit
10 is filing a claim.

11 So do I understand that the company would pay? Or
12 conversely, if I ruled that the statute applies and the claim
13 is barred, that means you never pay, you're -- in effect gotten
14 your lien released, right? I mean --

15 MR. HANCOCK: Yes.

16 THE COURT: -- essentially, under your theory, under
17 your theory, they can't -- the Department could have sued and
18 didn't, therefore lose its lien. The bankruptcy came along.
19 So in lieu of a suit, they file a proof of claim. If I say
20 there -- and under the Supreme Court teaching and the
21 Bankruptcy Code, if a claim could have been barred by the
22 statute of limitations before the bankruptcy, it's -- it can't
23 participate in the bankruptcy.

24 So the question then (audio interference) ruling in
25 your favor mean you have clear title to those ninety-two

PG&E Corporation and Pacific Gas and Electric Company
1 modulars?

2 MR. HANCOCK: So if -- yeah, correct. If the statute
3 of limitations had run before the bankruptcy, then -- as we are
4 arguing in the papers and our briefs at this hearing, then they
5 would be unable to enforce those liens because the statute of
6 limitations has run except to the approximately five thousand
7 dollars' worth of liens which -- for which the statute had not
8 run. And that's what --

9 THE COURT: Yeah, I understand that. I don't imagine
10 PG&E would have fought this fight for five thousand dollars.

11 Okay. But what that means, again, leaving aside
12 appeal, if I make a ruling that says PG&E wins, in effect, PG&E
13 can sell off those (audio interference) without the accrued
14 liens going with them. They're in effect (audio
15 interference), right?

16 MR. HANCOCK: So I'm sorry. You actually cut out and
17 froze there. I think I understood you to say if PG&E prevails
18 and you accept my statute of limitations argument, does PG&E
19 get effectively clear title?

20 THE COURT: Yes. Yeah.

21 MR. HANCOCK: So that's right. Because they no longer
22 can either attempt to enforce their claims proactively,
23 affirmatively, nor can they raise the lien defensively against
24 a request to clear title the title, the title should be
25 cleared.

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1 THE COURT: Okay, one second, please.

2 Yeah, I'll tell you what. I don't need to take time.
3 I was going to ask Ms. Lee to give me further information about
4 this Register Your Mobile Home. And Mr. Hancock, I was --
5 whether you need time to read the Montgomery Ward case. I
6 don't think that's necessary. You both have thoroughly briefed
7 an interesting but discreet question. And you've argued it
8 well. I don't need to waste any more time.

9 If I had nothing to do and wanted to write the
10 definitive piece of work on this so that there would be a
11 published case, I might do that. But I'm not. I'm satisfied
12 that Ms. Lee has got the prevailing argument here.

13 And that this notion that the case law says that there
14 must be clear and convincing proof of the legislative intent,
15 I'm satisfied that there is that proof. And the fact is that,
16 although there aren't magic words like bring a suit at any
17 time, I think Mr. Hancock used the term and recited to an
18 action at any time.

19 But I went back while you were arguing and reread
20 18116.1(b). And it begins with a notwithstanding. But that
21 same subparagraph goes on to read that the penalties and fees
22 will be due and delinquent for 120 days or more and continue to
23 accrue to include all fees and penalties that subsequently
24 become due and remain unpaid.

25 And then in the next subparagraph (c), it says until

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1 the amount of the lien provided in (a) is paid, the Department
2 shall not do either of the following. And then it goes on to,
3 in effect, mean clear title. I mean, again, that's a
4 shorthand. So to me, that is clear.

5 And more importantly, I think, given the comprehensive
6 coverage of the section, something that I have not encountered
7 before and learned from both of you what a modular unit is like
8 a coach -- I mean, we all know a mobile homes are in trailers
9 and boats, but some of these names are a little more obscure
10 for us that live in the city. To me, there's a comprehensive
11 scheme that's adopted here. And the legislature, to me, made
12 little -- left little doubt about it.

13 And I would almost -- notwithstanding the Supreme
14 Court's California's clear and unmistakable message, I think it
15 is clear and unmistakable. And it's clear and unmistakable to me
16 that there simply isn't a statute -- let's put it this way.
17 I'm not going to -- I'm not going to worry about whether PG&E
18 could or couldn't bring a suit. I'm satisfied that they
19 certainly have the right to hold onto these liens. And that
20 certainly translates for these purposes, for -- in this context
21 that they have a claim that's allowable here.

22 So in other words, Mr. Hancock, I wasn't trying to set
23 you up for the kill by telling you what my conclusion was,
24 because I frankly hadn't decided. I wanted to listen to the
25 argument. But in the traditional claims allowance process,

PG&E Corporation and Pacific Gas and Electric Company
1 when a claim is allowed, the debtor is expected to pay it.
2 PG&E is a solvent debtor. It's paying its creditors and
3 particularly the creditors who aren't affected by the fire
4 trust. And if I thought that PG&E would take a loss here as
5 something that they just simply won't pay it anyway, they'll
6 wait until they want to try to transfer these units, I
7 wouldn't -- I wouldn't take kindly to that. I would take -- I
8 would be of the view that they have an obligation to do it.

9 So I'm going to make this oral explanation that I'm
10 going to sustain -- or overrule the debtors' objections and
11 sustain the Department's interpretation and say that it has an
12 allowed claim in the amount prayed for, for the reasons
13 articulated and particularly that I've just decided. If PG&E
14 wishes to appeal it, this is a pure question of law. I don't
15 need to make any findings. There are no facts in dispute. Ms.
16 Campbell's statement was factual, but it's not a fact that's
17 material or influences my outcome. To me the -- so I don't
18 think that, Mr. Hancock, you or your client are prejudiced on
19 that.

20 So this is -- a long way of saying is I don't believe
21 that the statute of limitations under this matter of California
22 law bars the Department's right to enforce its rights under the
23 statute. As a practical matter, I believe it therefore has the
24 right to compel payment until it transfers any title to a
25 purchaser or anyone else.

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1 And then, as a more practical matter, as the judge
2 overseeing the case, I believe it's consistent with that ruling
3 that I would direct PG&E to pay the amount -- do the same way
4 they would pay any other allow claim in this case.

5 Again, as long as they -- I mean, if he chooses to
6 appeal my decision, I'm not going to worry about that. I'm
7 going to assume that if they accept my ruling and do not appeal
8 it, they'll just pay it in the normal course.

9 Ms. Lee, this is another way of saying I'm ruling in
10 your favor. I will issue a simple order that will recite that,
11 for the reasons stated on the record -- I haven't thought of
12 the exact words, but it will be that I'm overruling the
13 debtors' objections and contending and concluding that the
14 Department has preserved its lien rights. And that's where the
15 order will stop.

16 I'm saying to you, I'm assuming Mr. Hancock and his
17 client will -- if they choose not to appeal this ruling, they
18 will simply pay them the bill, if you will. If they don't, I'm
19 available to provide some sort of appropriate remedy, if
20 necessary. I hope it doesn't come to that, and I don't expect
21 it to. It's a practical matter. It may be 300 thousand
22 dollars. But in the grand order of things in the PG&E
23 bankruptcy, that's something that I don't expect to have
24 further hearings about unless necessary.

25 So I want to thank you both for -- again, for

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1 addressing a -- maybe for you -- and Ms. Lee -- maybe this is
2 everyday stuff for you in your specialty, but it's certainly
3 not something that I encounter very often.

4 And to you, Mr. Hancock, again, I don't know whether
5 this is your daily bread and butter, but you both handled it
6 very thoroughly. And I appreciate the argument.

7 So I'll thank you both for your efforts, congratulate
8 you, Ms. Lee, for your success, and leave it at that.

9 Any questions from either of you?

10 MR. HANCOCK: No. Thank you, Your Honor.

11 MS. LEE: No. Thank you --

12 THE COURT: Thank you very much for your time.

13 MS. LEE: -- for your time, Your Honor.

14 THE COURT: Thank you. Thank you.

15 Ms. Parada. I'm going to conclude the hearing at this
16 point.

17 (Whereupon these proceedings were concluded.)

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1 C E R T I F I C A T I O N
2
34 I, Michael Drake, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.
6
7 
89 /s/ MICHAEL DRAKE, CER-513, CET-513
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15 Date: September 16, 2021
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